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*Attorneys for Claimants Burton Harold Moss  
Individual Retirement Account, Burt Moss &  
Associates, Inc. 401K Plan, and Burt & Susan  
Moss, Ten Ent*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

**SECURITIES INVESTOR PROTECTION  
CORPORATION,**

**Plaintiff,**

**vs.**

**BERNARD L. MADOFF INVESTMENT  
SECURITIES LLC,**

**Defendant.**

**Adv. Pro. No. 08-01789 (BRL)**

**SIPA Liquidation**

**CLAIMANTS BURTON  
HAROLD MOSS INDIVIDUAL  
RETIREMENT ACCOUNT,  
BURT MOSS & ASSOCIATES,  
INC. 401K PLAN, AND BURT &  
SUSAN MOSS, TEN ENT'S  
OBJECTION TO TRUSTEE'S  
DETERMINATION OF CLAIMS**

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Claimants Burton Harold Moss Individual Retirement Account (the "IRA Account"), Burt Moss & Associates, Inc. 401K Plan (the "401K Plan Account"), and Burt & Susan Moss, Ten Ent the "T by E Account") (collectively referred to herein as the "Claimants"), by and through their undersigned counsel, hereby object to the denial of their claims as reflected in the Trustee's Determination of Claim notices dated December 8, 2009<sup>1</sup> and state as follows:

\_\_\_\_\_  
<sup>1</sup> The Claimants have filed three claims, attached hereto as **Exhibits A, B, and C**, and copies of the Trustee's Determination of Claim for each claim are attached hereto as **Exhibits D, E, and F**. Please note that the Trustee has erroneously assigned two claim numbers to each of the claims filed as follows: the IRA Account Claim has been designated by the Trustee as Claim No. 003782 and Claim No.004949; the 401K Claim has been designated by the Trustee as Claim No. 003775 and Claim No.004950; and the T by E Account Claim has been designated by the Trustee as Claim

1. Claimants invested monies in Bernard L. Madoff Investments Securities LLC (“BLMIS”) by way of investment club/feeder/partnership funds, identified as SPJ Investments, Ltd.<sup>2</sup> and P & S Associates General Partnership. These investment club/feeder/partnership funds maintained accounts with BLMIS and received statements from BLMIS which they, in turn, sent to Claimants. The last statements received by Claimants from BLMIS and the feeder funds indicated that the IRA had a balance of \$688,716.84; that the 401 K had a balance of \$521,381.34; and the T by E Account had a balance of \$1,436, 413.51. *See* Claims, attached hereto as **Exhibits A, B, and C**. These were the amounts submitted as claims to the Trustee.

2. As reflected in the Trustee’s Determination of Claim notices, the Trustee has rejected the Claimants’ claims on the following basis:

Based on a review of available books and records of BLMIS by the Trustee’s staff, you did not have an account with BLMIS. Because you did not have an account, you are not a customer of BLMIS under SIPA as that term is defined at 15 U.S.C. § 78lll(2). Accordingly, your Claim for securities and/or a credit balance is **DENIED**.

*See* Notice of Trustee’s Determination of Claim, attached hereto as **Exhibits D, E, and F**. The Trustee cited no legal precedent or other basis for his narrow interpretation of “customer” or for his rejection of Claimants’ claims.

3. The language of 15 U.S.C. § 78lll(2) defining a “customer” reads as follows:

The term “customer” of a debtor means any person (including any person with whom the debtor deals as principal or agent) who has a claim on account of securities received, acquired, or held by the debtor in the ordinary course of its business as a broker or dealer from or for the securities accounts of such person for

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No. 003783 and Claim No.005343.

<sup>2</sup> SPJ Investments, Ltd. has advised claimants that it was one hundred percent invested in S & P Associates, General Partnership, which in turn was one hundred percent invested in BLMIS.

safekeeping, with a view to sale, to cover consummated sales, pursuant to purchases, as collateral security, or for purposes of effecting transfer. The term “customer” includes any person who has a claim against the debtor arising out of sales or conversions of such securities, and any person who has deposited cash with the debtor for the purpose of purchasing securities, but does not include —

(A) any person to the extent that the claim of such person arises out of transactions with a foreign subsidiary of a member of SIPC; or

(B) any person to the extent that such person has a claim for cash or securities which by contract, agreement, or understanding, or by operation of law, is part of the capital of the debtor, or is subordinated to the claims of any or all creditors of the debtor, notwithstanding that some ground exists for declaring such contract, agreement, or understanding void or voidable in a suit between the claimant and the debtor.

15 U.S.C. § 78lll(2).

4. Contrary to the Trustee’s determination that Claimants are not “customers” of BLMIS, Claimants contend that they are “customers” of BLMIS as that term is defined by 15 U.S.C. § 78lll(2). Consequently, their claims should not have been rejected by the Trustee.

Dated: January 6, 2010  
Boca Raton, Florida

Respectfully submitted,

**s/Carl F. Schoeppl, Esq.**

Carl F. Schoeppl, Esq. (7917)

*Counsel for Claimants Burton Harold Moss  
Individual Retirement Account, Burt Moss &  
Associates, Inc. 401K Plan, and Burt & Susan  
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**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing was served in the manner provided upon the persons listed below on this 6<sup>th</sup> day of January, 2010.

**s/Carl F. Schoeppl, Esq.**\_\_\_\_\_

Carl F. Schoeppl, Esq. (7917)

Counsel for Claimants Burton Harold Moss  
Individual Retirement Account, Burt Moss &  
Associates, Inc. 401K Plan, and Burt & Susan  
Moss, Ten Ent

<b>Party</b>	<b>Method of Service</b>	<b>Name, Address, Telephone, and Facsimile of Party's Counsel</b>
Irving H. Picard, Trustee for the Liquidation of the Business of Bernard L. Madoff Investment Securities LLC	CM/ECF and Federal Express Overnight	Irving H. Picard, Trustee c/o Baker & Hostetler LLP Attn: Claims Department 45 Rockefeller Plaza New York, New York 10111 Telephone (561) 668-5663

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